

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GILEAD SCIENCES, INC. and  
EMORY UNIVERSITY,

Plaintiffs,

v.

CIVIL ACTION NO. 1:14cv99  
(Judge Keeley)

MYLAN INC. and MYLAN  
PHARMACEUTICALS, INC.,

Defendants.

SCHEDULING ORDER

On **September 18, 2014**, the parties filed their meeting report and proposed discovery plan. On October 2, 2014, the Court conducted a scheduling conference in this matter and, pursuant to Fed. R. Civ. P. 16(b), Fed. R. Civ. P. 26(f) and the Local Rules of Civil Procedure, as amended on July 20, 2010, **ORDERS** that the following table of dates and deadlines shall govern the further preparation of this case<sup>1</sup>:

TABLE OF DATES AND DEADLINES	
STATUS CONFERENCE	December 12, 2014 9:30 A.M.
COMPLETION OF FACT DISCOVERY	May 28, 2015

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<sup>1</sup> As noted in this Court's First Order and Notice Regarding Discovery and Scheduling, the report is considered advisory only. Accordingly, this Court adopts the proposed discovery plan of the parties only to the extent noted.

**GILEAD SCIENCES, INC. v. MYLAN, INC.****1:14cv99****SCHEDULING ORDER**

PLAINTIFF EXPERT DISCLOSURE	July 9, 2015
DEFENDANT EXPERT DISCLOSURE	July 9, 2015
REBUTTAL EXPERT DISCLOSURE	August 21, 2015
COMPLETION OF EXPERT DISCOVERY	November 20, 2015
DAUBERT MOTIONS	January 15, 2016
DAUBERT RESPONSE	February 5, 2016
DAUBERT HEARING	March 24, 2016 10:00 A.M.
LIST OF CLAIM TERMS TO BE DISPUTED	January 8, 2015
PROPOSED CLAIM CONSTRUCTION OF TERM(S) PROPOSED	January 8, 2015
NOTIFY THE COURT WHETHER CLAIM CONSTRUCTION IS NECESSARY	January 22, 2015
PLAINTIFFS CLAIM CONSTRUCTION BRIEF	February 19, 2015
DEFENDANTS ANSWERING BRIEF	March 12, 2015
HEARING ON CLAIM CONSTRUCTION	April 14, 2015 10:00 A.M.
INTERIM STATUS CONFERENCE	November 9, 2015 3:30 P.M.
DISPOSITIVE MOTIONS	January 15, 2016
RESPONSE TO DISPOSITIVE MOTIONS	February 5, 2016
REPLY TO DISPOSITIVE MOTIONS	February 19, 2016
DISPOSITIVE MOTIONS HEARING	March 24, 2016 10:00 A.M.
MOTIONS IN LIMINE	April 25, 2016
RESPONSES TO MOTIONS IN LIMINE	May 2, 2016
JOINT PRETRIAL ORDER	April 27, 2016

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

## SCHEDULING ORDER

PLAINTIFF'S FINAL LIST OF WITNESSES AND EXHIBITS	April 27, 2016
DEFENDANT'S FINAL LIST OF WITNESSES AND EXHIBITS	April 27, 2016
OBJECTIONS TO FINAL LIST OF WITNESSES AND EXHIBITS	May 4, 2016
PLAINTIFF'S INTERROGATORIES AND DEPOSITIONS TO BE USED AT TRIAL	April 27, 2016
DEFENDANT'S INTERROGATORIES AND DEPOSITIONS TO BE USED AT TRIAL	April 27, 2016
OBJECTIONS TO INTERROGATORIES AND DEPOSITIONS	May 4, 2016
STIPULATION OF FACTS	May 4, 2016
PROPOSED EXPERT WITNESS BIOGRAPHICAL SKETCHES	May 4, 2016
DESIGNATION OF JOINT EXHIBITS	May 4, 2016
PRETRIAL CONFERENCE/FINAL SETTLEMENT CONFERENCE	May 9, 2016 10:00 A.M.
TRIAL DATE	May 16, 2016 10:00 A.M. First

1. **INTERIM STATUS CONFERENCE**: The Court will hold an interim status conference telephonically on **December 12, 2014, at 9:30 A.M.**

Lead counsel for the Plaintiff is instructed to set up the call, and to provide the Court and counsel for the Defendant with call-in information.

2. **EXPERT DISCLOSURES**: The plaintiff shall make the disclosures of information required by Fed. R. Civ. P. 26(a)(2)(A)

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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and (B) for that issue to all other parties or their counsel no later than **July 9, 2015**.

The defendant shall make the disclosures required by Fed. R. Civ. P. 26(a)(2)(A) and (B) for that issue to all other parties or their counsel no later than **July 9, 2015**.

All parties shall provide the disclosures required by Fed. R. Civ. P. 26(a)(2)(A) and (B) if the evidence is intended solely to contradict or rebut evidence on the same issue identified by another party under Fed. R. Civ. P. 26(a)(2)(B), no later than **August 21, 2015**. Expert discovery shall be completed by **November 20, 2015**.

The disclosures described in Fed. R. Civ. P. 26(a)(2)(B) shall not be required of physicians and other medical providers who examined or treated a party or party's decedent unless the physicians or medical providers will render an expert opinion in the case.

3. **DAUBERT MOTIONS, RESPONSE, HEARING DATE AND STATUS CONFERENCE**: *Daubert* motions shall be filed by **January 15, 2016**. Any such motions must be supported by a memorandum at the time the motion is filed with the Clerk. Response to such motions shall be delivered to the Clerk with copies served upon opposing counsel on

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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or before **February 5, 2016**. No reply to the response shall be filed. A hearing on *Daubert* motions and a Status conference will be held on **March 24, 2016 at 10:00 a.m.** at the Clarksburg, West Virginia point of holding court. By joint stipulation, the parties may choose to forego a hearing and submit *Daubert* motions for decision on the briefs.

4. **DISCOVERY**: All discovery shall be completed by **May 28, 2015**. "Completed discovery" as used in Fed. R. Civ. P. 16(b) means that, within the time limits set, all discovery, objections, motions to compel, and all other motions and replies relating to discovery in this civil action have been filed and the party objecting or responding has had sufficient time under the Federal Rules of Civil Procedure to make responses. The term "all discovery" in the preceding definition of "completed discovery" includes the disclosures required by Fed. R. Civ. P. 26(a)(1) and (2), but does not include the disclosures required by Fed. R. Civ. P. 26(a)(3).

Parties have a continuing obligation to supplement their responses beyond the discovery cut-off date, as provided in Fed. R. Civ. P. 26(e). The parties should refer to L.R. Civ. P. 5.01, L.R. Civ. P. 26.01 -26.04, L.R. Civ. P. 33.01, L.R. Civ. P. 34.01, L.R.

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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Civ. P. 36.01, and L.R. Civ. P. 37.01 - 37.02 for further instructions on discovery practice.

The conduct of any discovery which would require a later time limit shall be permitted only on the order of the Court or by filed stipulation of the parties, and only in cases that will not be delayed for trial thereby.<sup>2</sup> The parties should be aware that a stipulation to the continuance of discovery anticipates no discovery disputes and, therefore, this Court will not hear discovery disputes arising during the stipulated continuance.

6. **CLAIM CONSTRUCTION ISSUE IDENTIFICATION:** On or before **January 8, 2015**, the parties shall exchange a list of those claim term(s)/phrase(s) that they believe will likely be disputed and require construction. On or before **January 8, 2015**, the parties will exchange their proposed claim construction of those term(s)/phrase(s). The parties will notify the Court whether claim construction is necessary on or before **January 22, 2015**.

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<sup>2</sup> Extension of the discovery deadline does not change the other deadlines set forth herein nor shall it be a basis for seeking extension of those deadlines. In particular, the deadline for dispositive motions generally cannot be changed without affecting the trial date. In considering to extend discovery, the parties should give thought as to any possible impact on contemplated dispositive motions.

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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7. **CLAIM CONSTRUCTION BRIEFING:** The parties shall file their opening brief on or before **February 19, 2015**. Defendants shall file their answering brief on or before **March 12, 2015**. A hearing on claim construction will be held on **April 14, 2015 at 10:00 A.M.**

8. **LIMITATIONS ON DISCOVERY:** The preemptive limitations on discovery (numbers of interrogatories, requests for admission, and depositions) set out in L.R. Civ. P. 26.01(c) apply to this case unless otherwise stipulated or ordered.

9. **INTERIM STATUS CONFERENCE:** A telephonic interim status conference shall be held on **November 9, 2015, at 3:30 P.M.**

10. **DISPOSITIVE MOTIONS:** All dispositive motions, as well as deposition transcripts, admissions, documents, affidavits, and any other such matters in support thereof, shall be filed by **January 15, 2016**. Unless parties have obtained an early briefing schedule from the Court, all dispositive motions should be filed after the close of discovery.

Any such motion must be supported by a memorandum at the time the motion is filed with the Clerk. Memoranda in opposition to such motions shall be delivered to the Clerk with copies served upon opposing counsel on or before **February 5, 2016**. Any reply memoranda shall be delivered to the Clerk with copies served upon

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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opposing counsel on or before **February 19, 2016**. All dispositive motions unsupported by memoranda will be denied without prejudice. See L.R. Civ. P. 7.02(a).

Factual assertions made in memoranda should be supported by specific references to affidavits, depositions or other documents made a part of the record before the Court. Copies of the supporting documents, or relevant portions thereof, should be appended to the memoranda. The parties may refer to L.R. Civ. P. 7.02, L.R. Civ. P. 12.02 and L.R. Civ. P. 78.01 for details on motion practice before this Court.

A dispositive motions hearing will be held on **March 24, 2016, at 10:00 A.M.**, at the Clarksburg, West Virginia, point of holding court.

11. **MOTIONS IN LIMINE**: All motions in limine, accompanied by memoranda of law, and all other related pre-trial motions shall be filed with the Clerk not later than **April 25, 2016**. Responses to such motions shall be filed by counsel by **May 2, 2016**.

12. **JOINT PRETRIAL ORDER**: A joint pre-trial order shall be submitted to the Court not later than **April 27, 2016**. The proposed joint pre-trial order shall contain at least those matters provided for under L.R. Civ. P. 16.04(b).



GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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The joint pretrial order shall contain for each party, a list of all witnesses who will be called at the trial:

- A. Each list of witnesses should include the witnesses' addresses and a statement of the general subject matter of their testimony. It is **NOT** sufficient to designate the witness simply "fact," "medical," or "expert." The list must also include an indication in good faith of those witnesses who **WILL** be called in the absence of reasonable notice to opposing counsel to the contrary and of those witnesses who **MAY** be called.
- B. This restriction does not apply to rebuttal witnesses or documents when necessity cannot be reasonably anticipated. Furthermore, in the case of expert witnesses, counsel shall certify that they have exchanged expert reports or have otherwise exchanged expert information. Expert witnesses whose reports have not been furnished to opposing counsel will not be permitted to testify nor shall experts be permitted to testify to opinions not included in the reports timely furnished.
- C. Except for good cause shown, the Court will not permit any witness to testify unless with respect to such witness there has been complete compliance with all provisions of this Order and prior court orders.

The witness lists submitted to this Court as part of the pre-trial order shall include all of a party's potential witnesses and exhibits and no party shall be permitted to add to these lists after the pretrial order is submitted to the Court. Following the pre-trial conference, this Court shall enter the final pre-trial order which shall be modified only to prevent manifest injustice.

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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13. **FINAL LIST OF WITNESSES AND EXHIBITS AND OBJECTIONS:**

Pursuant to Fed. R. Civ. P. 26(a)(3), on or before **April 27, 2016**, plaintiff shall file with the Clerk a final list of those exhibits and witnesses that he or she actually intends to use or call at trial. Prior to that, he shall either forward copies of the proposed exhibits or make them available to all other counsel for examination. On or before **April 27, 2016** defendant shall file a list of proposed exhibits to be used and witnesses to be called at trial after having forwarded copies of them or having them available for examination to all other counsel. All exhibits shall be appropriately marked in numerical sequence (not lettered). Exhibit markers may be obtained from the Clerk.

By each of the dates set forth above, each counsel shall tender to the Clerk two sets (preferably in binders and on disk) of copies of the exhibits to be used at trial. These should be indexed for easy reference and each paper exhibit should be individually tabbed. One of the binders will be for the Court's use and the other is for use by the witness. Counsel should have their own copy of each exhibit and should furnish opposing counsel with a copy of each exhibit. Original exhibits shall be submitted to the

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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Clerk at trial and should not be tendered to the Clerk prior to trial.

Any objection to any proposed witness or exhibit must be filed in writing no later than **May 4, 2016**, shall include a copy of the exhibit where possible, and shall include authority supporting the ground for objection. Failure to comply with this paragraph may constitute a waiver of objection or may result in the Court's denying any objection to the admission of an affected exhibit or witness.

14. **INTERROGATORIES AND DEPOSITIONS TO BE USED AT TRIAL AND OBJECTIONS**: Pursuant to Fed. R. Civ. P. 26(a)(3), on or before **April 27, 2016**, plaintiff shall file with the Clerk any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereto that plaintiff intends to offer in this case. Defendant shall do the same on or before **April 27, 2016**. Before designating these discovery materials, the parties shall meet and agree as to the elimination of all irrelevant and repetitive matter, and all colloquy between counsel in the depositions. In addition, the parties shall, in good faith, attempt to resolve all objections to testimony. Any objections to the testimony that cannot be amicably resolved and the grounds for the

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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objections shall be filed in writing by each of the parties no later than **May 4, 2016**, or such objection shall be deemed to have been waived. The objections shall include appropriate statement of authorities in support of the party's position. This paragraph does not apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.

15. **STIPULATION OF FACTS**: Counsel are encouraged to meet and enter into stipulations of facts in this case and any such stipulation shall be reduced to writing, signed by counsel and filed with the Court and with opposing counsel by **May 4, 2016**.

16. **BIOGRAPHICAL SKETCHES**: Biographical sketches of any proposed expert witnesses shall be filed with the Court and with opposing counsel by **May 4, 2016**.

17. **DESIGNATION OF JOINT EXHIBITS**: The parties should consider designating a list of joint exhibits and should file any list of exhibits to be jointly designated by **May 4, 2016**.

18. **PRETRIAL CONFERENCE/FINAL SETTLEMENT CONFERENCE**: A pre-trial conference/final settlement conference shall be held at **10:00 A.M.** on **May 9, 2016**, at **the Clarksburg, West Virginia** point of holding court. Lead trial counsel for each represented party must attend. Counsel and parties should be prepared to participate

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

**SCHEDULING ORDER**

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fully and to discuss all aspects of the case, including the matters set forth in the pre-trial order. Persons with full authority to settle the case for each party shall be present in person.

19. **TRIAL**: Trial will commence on **May 16, 2016** at **10:00 A.M.** at the **Clarksburg, West Virginia** point of holding court. This case is presently the **First** case on the trial docket for that week.

20. **SETTLEMENT AUTHORITY AND SANCTIONS**: At least one of the attorneys for each party participating in any conference before trial shall have authority to make decisions as to settlement, stipulations and admissions on all matters that participants reasonably anticipate may be discussed. Counsel and parties are subject to sanctions for failures and lack of preparation specified in Fed. R. Civ. P. 16(f) and L.R. Civ. P. 37.01 respecting pre-trial conferences or orders.

21. **DEADLINES FINAL**: The time limitations set forth above shall not be altered except as set forth in L.R. Civ. P. 16.01(f).

All dates for submissions, deliveries and filings with the Clerk or the Court refer to the date the materials must be actually received not the mailing date.

**FAILURE ON THE PART OF COUNSEL TO APPEAR AT THE PRETRIAL CONFERENCE OR TO COMPLY WITH THE REQUIREMENTS OF**

GILEAD SCIENCES, INC. v. MYLAN, INC.

1:14cv99

SCHEDULING ORDER

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THIS ORDER WILL SUBJECT THE PARTY OR ATTORNEY TO APPROPRIATE SANCTIONS UNDER THE RULES, AND MAY RESULT IN DISMISSAL OR STRIKING OF ALL PLEADINGS OF THE FAILING PARTY OR PERSON. COMPLIANCE WITH THIS ORDER INCLUDES *TIMELY* AND *GOOD FAITH EFFORT* BY ALL PARTIES TO MEET AND *JOINTLY* PREPARE THE FINAL PRETRIAL ORDER AND OTHER ITEMS DESCRIBED ABOVE.

It is so ORDERED.

The Court directs the Clerk to transmit copies of this Scheduling Order to counsel of record.

DATED: October 6, 2014

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE